

FIRST REGULAR SESSION

SENATE BILL NO. 166

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR JUSTUS.

Read 1st time January 8, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

0829S.011

AN ACT

To repeal section 456.5-505, RSMo, and to enact in lieu thereof two new sections relating to the Missouri uniform trust code.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 456.5-505, RSMo, is repealed and two new sections
2 enacted in lieu thereof, to be known as sections 456.4-418 and 456.5-505, to read
3 as follows:

456.4-418. 1. During any period of time that this section applies
2 **to an irrevocable trust, the trustee shall have the authority in its**
3 **discretion to distribute trust income or principal to a qualified**
4 **remainder beneficiary of the trust. For purposes of this section, a**
5 **"qualified remainder beneficiary" is a descendant of a permissible**
6 **distributee who will be eligible to receive distributions of trust income**
7 **or principal, whether mandatory or discretionary, upon the termination**
8 **of the interest of such permissible distributee or upon the termination**
9 **of the trust.**

10 **2. This section shall apply to an irrevocable trust that is**
11 **administered in this state if:**

12 **(1) The trustee may distribute trust income or principal to one**
13 **or more permissible distributees;**

14 **(2) No distributions of trust income or principal have been made**
15 **to any permissible distributee during the ten-year period preceding the**
16 **notice required by subsection 5 of this section;**

17 **(3) The trustee determines that there will be sufficient assets in**
18 **the trust for the trustee to meet its obligations to the permissible**
19 **distributees after any distributions authorized by this section;**

20 **(4) The trustee determines that the application of this section to**

21 **the trust is not inconsistent with a material purpose of the trust; and**

22 **(5) The trustee determines that the application of this section to**
23 **a trust that is exempt from the federal generation-skipping transfer tax**
24 **will not cause the trust to become subject to such tax.**

25 **3. After the trustee determines that this section applies to a**
26 **trust, this section shall continue to apply to the trust until the first to**
27 **occur of the following:**

28 **(1) The termination of the interests of all the beneficiaries who**
29 **were permissible distributees on the date of the notice required by**
30 **subsection 5 of this section;**

31 **(2) The termination of the trust; or**

32 **(3) The trustee determines that additional distributions under**
33 **this section will impair the ability of the trustee to meet its obligation**
34 **to the permissible distributees.**

35 **4. A spendthrift provision in the terms of a trust is not presumed**
36 **inconsistent with the application of this section to the trust.**

37 **5. The trustee shall notify the qualified beneficiaries of the**
38 **trustee that the trustee has determined that this section applies to a**
39 **trust not less than sixty days before distributing trust income or**
40 **principal to any qualified remainder beneficiary.**

41 **6. A trustee acting in good faith shall not be liable to any**
42 **beneficiary for acting or failing to act under this section.**

456.5-505. 1. Whether or not the terms of a trust contain a spendthrift
2 provision, during the lifetime of the settlor, the property of a revocable trust is
3 subject to claims of the settlor's creditors.

4 2. With respect to an irrevocable trust without a spendthrift provision, a
5 creditor or assignee of the settlor may reach the maximum amount that can be
6 distributed to or for the settlor's benefit. If a trust has more than one settlor, the
7 amount the creditor or assignee of a particular settlor may reach may not exceed
8 the settlor's interest in the portion of the trust attributable to that settlor's
9 contribution.

10 3. With respect to an irrevocable trust with a spendthrift provision, a
11 spendthrift provision will prevent the settlor's creditors from satisfying claims
12 from the trust assets except:

13 (1) Where the conveyance of assets to the trust was fraudulent as to
14 creditors pursuant to the provisions of chapter 428, RSMo; or

15 (2) To the extent of the settlor's beneficial interest in the trust assets, if
16 at the time the trust became irrevocable:

17 (a) The settlor was the sole beneficiary of either the income or principal
18 of the trust or retained the power to amend the trust; or

19 (b) The settlor was one of a class of beneficiaries and retained a right to
20 receive a specific portion of the income or principal of the trust that was
21 determinable solely from the provisions of the trust instrument.

22 4. Any trustee who has a duty or power to pay the debts of a deceased
23 settlor may publish a notice in some newspaper published in the county **in**
24 **which the domicile of the settlor at the time of his or her death is**
25 **situated** once a week for four consecutive weeks in substantially the following
26 form:

27 To all persons interested in the estate of, decedent. The
28 undersigned is acting as Trustee under a trust the terms of which
29 provide that the debts of the decedent may be paid by the Trustee(s) upon receipt
30 of proper proof thereof. The address of the Trustee is

31 All creditors of the decedent are noticed to present their claims to the
32 undersigned within six (6) months from the date of the first publication of this
33 notice or be forever barred.

34
35 Trustee

36 (1) If such publication is duly made by the trustee, any debts not
37 presented to the trustee within six months from the date of the first publication
38 of the preceding notice shall be forever barred as against the trustee and the
39 trust property.

40 (2) A trustee shall not be liable to account to the decedent's personal
41 representative under the provisions of section 461.300, RSMo, by reason of any
42 debt barred under the provisions of this subsection.

43 **(3) For purposes of this subsection, the term "domicile" means the**
44 **place in which the settlor voluntarily fixed his or her abode, not for a**
45 **mere special or temporary purpose, but with a present intention of**
46 **remaining there permanently or for an indefinite term.**

47 5. For purposes of this section:

48 (1) During the period the power may be exercised, the holder of a power
49 of withdrawal is treated in the same manner as the settlor of a revocable trust
50 to the extent of the property subject to the power; and

51 (2) Upon the lapse, release, or waiver of the power, the holder is treated
52 as the settlor of the trust only to the extent the value of the property affected by
53 the lapse, release, or waiver exceeds the greater of the amount specified in
54 Sections 2041(b)(2), 2514(e) or 2503(b) of the Internal Revenue Code. 6. This
55 section shall not apply to a spendthrift trust described, defined, or established in
56 section 456.014.

✓

Unofficial

Bill

Copy